

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1280****[No. LS-94-015]****Sheep and Wool Promotion, Research, Education, and Information Order****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule.

SUMMARY: The Sheep Promotion, Research, and Information Act of 1994 (Act), authorized the establishment of a national, industry-funded and -operated sheep and wool promotion, research, education, and information program. On January 4, 1995, the Agricultural Marketing Service (AMS) published in the Federal Register an invitation to submit proposals for a sheep and wool promotion, research, education, and information order (Order). AMS received an entire industry proposal as well as four other partial proposals, all of which were published for public comment in the June 2, 1995, issue of the Federal Register. A public meeting was held on June 26, 1995, at the Department of Agriculture (Department) to discuss the proposed Order and to solicit comments on the proposal. After evaluating the written comments submitted, the transcript from the public meeting, and other available material, an Order is issued pursuant to the provisions of the Act and will be subject to a referendum.

Before the Order is made effective, a referendum must be conducted among sheep producers, sheep feeders, and importers of sheep and sheep products, except importers of raw wool. A final referendum rule will be published separately in the Federal Register. If sheep producers, feeders, and importers voting in the referendum approve the proposed Order, all producers, feeders, and importers would be required to pay assessments, which would be used in a national program of sheep and wool promotion, research, education, consumer, industry, and producer information.

The certification and nomination procedures for the establishment of the National Sheep Promotion, Research, and Information Board (Board) as well as other implementing regulations will be published separately in the Federal Register.

ADDRESSES: Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2606-S; Livestock and Seed Division, AMS-USDA; P.O. Box 96456; Washington, D.C. 20090-6456.

FOR FURTHER INFORMATION CONTACT:

Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720-1115.

SUPPLEMENTARY INFORMATION: Prior documents: Notice-Invitation to submit proposals published January 4, 1995 (60 FR 381); Proposed Rule-Sheep and Wool Promotion, Research, Education, and Information Order published June 2, 1995 (60 FR 28747); Proposed Rule: Procedures for Conduct of Referendum published August 8, 1995 (60 FR 40313); Notice-Certification of Organization for Eligibility to Make Nominations to the Proposed Board published August 8, 1995 (60 FR 40343); Proposed Rule-Rules and Regulations published October 3, 1995 (60 FR 51737).

Regulatory Impact Analysis*Executive Orders 12866 and 12778 and the Regulatory Flexibility Act*

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule was reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner would have the opportunity for a hearing on the petition. Thereafter the Secretary would issue a decision on the petition. The Act provides that the district court of the United States in the district in which the petitioner resides or carries on business has jurisdiction to review the Secretary's decision, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the decision. The petitioner must exhaust his or her administrative remedies before filing such a complaint in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

The purpose of RFA is to fit regulatory actions to the scale of the businesses that are subject to such actions so that small businesses would not be unduly or disproportionately burdened.

According to the January 27, 1995, issue of "Sheep and Goats," published by the Department's National Agricultural Statistics Service, there are approximately 87,350 sheep operations in the United States, nearly all of which would be classified as small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). Additionally, there are approximately 9,000 importers of sheep and sheep products, nearly all of which would be classified as small businesses.

This proposed Order would require each person who makes payment to a sheep producer, feeder, or handler of sheep or sheep products to be a collecting person, and to collect an assessment from that sheep producer, feeder, or handler of sheep or sheep products. Any person who buys domestic live sheep or greasy wool for processing must also collect the assessment and remit it to the Board. Each person who processes or causes to be processed sheep or sheep products of that person's own production and who markets the processed products would pay an assessment and remit the assessment to the Board. Any person who exports live sheep or greasy wool would be required to remit an assessment to the Board. Finally, each person who imports into the United States sheep, sheep products, wool, or wool products, other than raw wool, would pay an assessment. The U.S. Customs Service (Customs) would collect the assessments on imported sheep and sheep products (except raw wool) and forward them to AMS for disbursement to the Board.

The rate of assessment on domestic sheep producers, feeders, and exporters of live sheep and greasy wool would be 1-cent-per-pound on live sheep sold and 2-cents-per-pound on greasy wool sold. Importers would be assessed 1-cent-per-pound on live sheep and the equivalent of 1-cent-per-pound of live sheep for sheep products and 2-cents-per-pound of degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool would be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products would be assessed the equivalent of 1-cent-per-pound of live sheep sold and 2-cents-per-pound of greasy wool sold. All assessment rates

may be adjusted in accordance with the applicable provisions of the Act.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained herein were submitted to OMB for approval and assigned OMB No. 0581-0093. This action sets forth the provisions for establishing a nationwide, industry-funded sheep and wool promotion, research, education, and information program. The information collection requirements as required by this action and necessary for the implementation of this Order include:

(1) A report by each collecting person required to remit assessments to the Board for live sheep or greasy wool purchased from the producer, feeder, or handler of sheep or sheep products; by each person marketing sheep or sheep products of that person's own production; and by each exporter of sheep or greasy wool. The estimated number of respondents for this report is 700. Each respondent would submit one report per month, unless otherwise prescribed by the Board, and the estimated average reporting burden is 0.5 hours per response;

(2) A requirement to maintain sufficient records to verify reports submitted under the Order. The estimated number of recordkeepers needed to comply with this requirement is 700, each of whom would have an estimated annual reporting burden of 0.5 hours;

(3) An application for certification of organization, to be completed by eligible organizations that request certification in order to be eligible to nominate producers, feeders, and importers to the Board. The estimated number of respondents is 70 (with each submitting one response), and the estimated average reporting burden is 0.5 hour per response;

(4) A nomination form by which certified organizations will nominate producers, feeders, and importers for membership on the Board. The estimated number of respondents is 60 for the first year of the Order, and 20 each year thereafter. Each respondent would submit one response per year, and the estimated average reporting burden is 0.5 hour per response; and

(5) An advisory committee membership background information form, to be completed by candidates nominated by certified organizations for appointment to the Board. The estimated number of respondents is 240 during the first year of the Order, and 80 each year thereafter. Each respondent

would submit one response per year, and the estimated average reporting burden is 0.5 hour per response.

Background

The Act (7 U.S.C. 7101-7111), approved October 22, 1994, authorizes the Secretary to establish a national sheep and wool promotion, research, education, and information program. The program would be funded by a mandatory assessment on domestic sheep producers, sheep feeders, and exporters of live sheep and greasy wool of 1-cent-per-pound on live sheep sold and 2-cents-per-pound on greasy wool sold. Importers would be assessed 1-cent-per-pound on live sheep imported and the equivalent of 1-cent-per-pound of live sheep for sheep products imported and 2-cents-per-pound of degreased wool or the equivalent of degreased wool for wool and wool products imported. Imported raw wool would be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production, and who markets the processed products, would be assessed the equivalent of 1-cent-per-pound of live sheep sold and 2-cents-per-pound of greasy wool sold. All assessment rates may be adjusted in accordance with applicable provisions of the Act.

The Act provides for the submission of proposals for a Sheep and Wool Promotion, Research, Education, and Information Order (Order). The Secretary may propose the issuance of an Order, or an association of sheep producers may submit and request the issuance of an Order. The Act provides that when the Secretary decides to propose an Order or receives a request and proposal for an Order, the Secretary shall publish the proposed Order and give due notice and opportunity for public comment. As established by the Act, the Order provides for the establishment of a Board comprised of 85 sheep producers, 10 sheep feeders, and 25 importers of sheep and sheep products. The Act further provides that any State with one member may have an alternate member.

The Department issued an invitation to submit proposals for an initial Order in the January 4, 1995, (60 FR 381) issue of the Federal Register. In response to that invitation, the American Sheep Industry Association (ASI), the sheep industry's producer member organization, submitted a proposed Order. In addition, the New Zealand Meat Producers Board, the Australian Meat and Live-stock Corporation, the Wools of New Zealand, the National Lamb Feeders Association, and the

Lamb Committee of the National Livestock and Meat Board each submitted a partial proposal.

The Department also received letters from other interested parties. The Department did not consider these letters to be proposals because they primarily addressed information related to provisions of the Act itself. Copies of these letters and the comments received in response to the proposed Order, are available for public inspection.

The Department published ASI's proposal as Proposal I, the New Zealand Meat Producers Board's proposal as Proposal II, the Australian Meat and Live-stock Corporation's proposal as Proposal III, the Wools of New Zealand's proposal as Proposal IV, and the National Lamb Feeders Association's proposal as Proposal V. The Department modified these proposals slightly in order to (1) make them consistent with the Act and other similar national research and promotion programs supervised by the Department, (2) simplify the language and format of some provisions, and (3) add certain sections necessary for the proper administration of the Order by the Department. The Department rejected the proposal submitted by the Lamb Committee of the National Livestock and Meat Board and discussed that proposal in the proposed rule. Each proposal was published in the June 2, 1995, issue of the Federal Register (60 FR 28747). Interested persons were invited to submit comments on the proposals until July 17, 1995.

The Department received 137 written comments concerning the proposed Order from individual sheep producers, sheep feeders, importers of sheep and sheep products, State sheep producer organizations, general farm organizations, universities, and other interested parties. Ninety-three comments were filed on time and forty-four comments were filed after the comment period closed. The late comments generally expressed the same views as the timely comments that are discussed herein, and the commenters generally supported the primary proposed Order with certain qualifications.

The substantive changes suggested by commenters are discussed below, together with a description of changes made by the Department upon review of the proposed Order and the comments. The Department has also made other minor changes of a nonsubstantial nature for clarity and accuracy.

Of the ninety-three timely comments, sixty-two comments supported the proposed Order as published or expressed support with some

modifications or clarifications. Six comments opposed the entire Order or portions thereof. The remaining comments neither supported nor opposed the proposal in its entirety, but rather addressed specific sections in the proposed Order or made general comments relating to the Act or the Order. Forty-two comments did not express opposition to Proposal II which would provide for 6 of the 25 importer Board members to represent importers of sheep meat and that 1 member of the Executive Committee be an importer of sheep meat and that organizations that represent importers of sheep or sheep products may make nominations for representation of the importer unit. Two comments opposed Proposal II. Fifty-nine comments opposed Proposal III which would prohibit the use of assessments for specific country of origin promotion programs and two comments supported Proposal III. Forty-eight comments opposed Proposal IV which would provide that funds generated under the Act be used to promote (1) a wide range of wool products in the United States, including interior textile product; e.g., carpet rugs, and upholstery; and (2) wool generically rather than to promote wool specifically grown in the United States and four comments supported Proposal IV. Finally, fifty-two comments supported Proposal V, which would provide that domestic assessments could be used to promote "Fresh American Lamb." The discussions are organized by headings of the proposed Order's provisions.

Definitions

Two commenters recommended that we review all of the terminology in § 1280.101 through § 1280.136 in the proposed Order and clarify any terms that are ambiguous, in order to ensure that the definitions in the proposed Order generally conform with or mirror those in the Act. We agree, and reviewed the definitions and determined that the definitions in the proposed Order either mirror the definitions in the Act or conform to the Act's intent.

Section 1280.108 Degreased Wool

One commenter stated that the definition of "degreased wool" has created some confusion because the term for "degreased wool" used both in the United States and abroad, is "scoured wool." The commenter recommended that the term "degreased wool" be changed to "scoured wool." We have not adopted this recommendation because the Act defines the term "degreased wool" and we believe that the proposed Order's

definition should mirror the Act's definition. Accordingly, this suggestion is not adopted.

Section 1280.113 Feeder

Five commenters opposed the definition of "feeder" in the proposed Order. One commenter suggested that a "feeder" should be defined as "a person that is the second owner of the lamb" because the definition in the Act and in the proposed Order was ambiguous and could allow a person who was primarily a producer to occupy a feeder seat on the Board but prohibit a person who is primarily a feeder to occupy a producer seat on the Board. The same commenter also stated that according to the definition in the proposed Order many producers could be feeders, but few feeders could be producers. Another commenter suggested that "feeder" should be defined as "a producer who purchases more than 500 head of lambs a year, to be finished for the commercial market." The commenter believes that the intent of the Act was not to include 4-H club members who show market sheep or other individuals who sell only a few market lambs in the definition of "feeder". Another commenter suggested that "feeder" should be defined as "any person other than a producer who purchases lambs to be finished for the commercial market." Another commenter suggested that a "feeder" should be defined as one whose main source of income (over 50 percent) comes from lambs purchased for the purpose of feeding to market weight. Another commenter opposed the definition of "feeder" but did not provide an alternate definition. The Act itself defines "feeder" as any person who feeds lambs until the lambs reach slaughter weight. The Department finds that the definition in the proposed Order should mirror that found in the Act. Accordingly, we have not adopted any of these suggestions.

Section 1280.122 Producer

Five commenters opposed the definition of "producer" in the proposed Order. One commenter suggested that "producer" be defined as any person involved in certain industry segments * * * to include but not be limited to * * * a "commercial" ewe flock, purebred operation, speciality lamb and/or wool market segment, 4-H member or youth, because that definition is more representative of the producer segment of the sheep industry. Another commenter suggested that "producer" be defined as any producer who markets less than 500 purchased lambs per year. Another commenter suggested that "producer" be defined as

one who breeds sheep for the production of lamb and wool. Three other commenters opposed the definition of "producer" but did not provide an alternative definition. The Act defines "producer" as any person, other than a feeder, who owns or acquires ownership of sheep. The Department finds that the definition in the proposed Order should mirror that found in the Act. Accordingly, we have not adopted these suggestions.

One commenter suggested that the definitions of "feeder," "importer" and "producer" include a minimum age restriction and thus require an individual to be at least 18 years of age to ensure that those eligible to vote in the referendum are actually engaged in the commercial feeding, importation or production of sheep and sheep products. The Act does not specify any age limit or restriction as an eligibility requirement, and there are no age limits or restrictions on persons who are required to pay assessments. The Department believes that Congress intended that each person who is subject to the assessment should be entitled to vote. Accordingly, we have not adopted this suggestion.

Section 1280.126 Qualified State Sheep Board

One commenter opposed the definition of "Qualified State Sheep Board (QSSB)" because § 1280.126 of the proposed Order was inconsistent with § 2(5), "Findings and Declaration Policy," of the Act, which states that existing State organizations which conduct sheep and sheep product promotion, research, industry, and consumer education programs that are invaluable to the efforts of promoting the consumption of sheep and sheep products. The commenter further believes that the definition of "QSSB" would allow any private trade association to be recognized as a "QSSB," because they are entities organized and operating within the State. Additionally, the commenter states that § 1280.126 in the proposed Order defines QSSB as a sheep and wool promotion entity but also appears to include entities that conduct promotion, research or consumer information programs with respect to sheep or wool or both. Finally, the same commenter suggested that § 1280.126 in the proposed Order be amended to include the following subsection "(d)": "(d) * * * has agreed to maintain books and records as specified in regulations approved by the Secretary, to be subject to audit by or at the direction of the Secretary, to abide by all terms of the Act and the Order and to immediately

suspend any and all activities funded by assessments collected pursuant to the Act and Order upon receipt of such a request from the Secretary." The Department believes that the Board would have the authority to certify a "QSSB" in each State. Furthermore, the Department believes that the Board should have the latitude to establish requirements, subject to Departmental approval, to ensure that funds expended by "QSSB's" are spent in accordance with the Act and the Order. The Act defines a "QSSB", as a sheep and wool promotion entity that is authorized by State statute or organized and operating within a State, receives voluntary contributions or dues and conducts promotion, research, or consumer information programs with respect to sheep or wool, or both, and is recognized by the Board as the sheep and wool promotion entity within the State; except that not more than one QSSB shall exist in any State at any one time. Therefore, we believe that the definition in the proposed Order should mirror that found in the Act. Accordingly, we have not adopted these suggestions.

Section 1280.127 Raw Wool

Six commenters suggested that the definition of "raw wool" should be expanded to include wooltop, noils of wool and wool waste so that the definition is both clear and consistent with the North American Free Trade Agreement "Yarn Forward" rule of origin for wool and other textile imports. The Department has reviewed the definition of "raw wool," and believes that Congress intended to assess processed sheep and sheep products but not raw wool. The Act defines "raw wool" as greasy wool, pulled wool, degreased wool, or carbonized wool. Furthermore, the Department finds that wooltop, noils of wool, and wool waste result from the processing of raw wool as defined in the Act and we believe that Congress intended that all processed products would be subject to the assessment. Therefore, to expand the definition would not be consistent with the intent of the Act. We have determined that the definition in the proposed Order mirrors that found in the Act. Accordingly, we have not adopted this suggestion.

National Sheep Promotion, Research, and Information Board

Section 1280.201 Establishment and Membership of the Board

Eighteen commenters opposed one or more aspects of the "Establishment and Membership of the Board" portion of

the proposed Order. In general, the commenters felt that (1) the Board was too large and cumbersome for the sheep industry, (2) the Board should realign its membership on a 3-year basis based on actual collections from each industry segment, (3) the Board should include a packer/breaker/retailer member because including representatives of all or some of these entities would enhance communication and lead to greater promotional efficiency and cooperation, (4) the Board is not fairly representative of producer, feeder and importer groups based on total assessment contributions, and (5) a certain number of seats on the Board should be held by each member category—sheep producers, sheep feeders and importers of sheep and sheep products—based on total assessments collected from these groups.

The Act provides for the establishment and membership of the Board, including the number of members from each industry segment to be represented on the Board. The Act does not authorize the Board's membership to (1) be adjusted on a 3-year basis, (2) include a packer/breaker/retailer seat or (3) be based on total contributions from each industry segment. Accordingly, we have not adopted any of these suggestions.

One commenter suggested amending § 1280.201 to include the following subsection: "(e) in accordance with regulations approved by the Secretary, at least every 3 years and not more than every 2 years, the Board shall review the relative investments made by producers, feeders, and importers through payment of assessments and, if warranted, shall reapportion representation on the Board in order to best reflect the current state of the sheep and sheep products industry and ensure equitable representation in relation to respective groups total assessments." The Act authorizes the establishment of a 120-member Board comprised of 85 producers, 10 feeders and 25 importers. The Act does not authorize reapportionment of the Board for any reason. Accordingly, we have not adopted this suggestion. The same commenter also suggested amending § 1280.201 to include a subsection "(f)" to read: "(f) a quorum of the Board shall consist of the producer representatives, importer representatives and feeder representatives or their respective alternates and a majority vote of representatives at a meeting in which a quorum is present shall constitute an act on the Board." The Department has determined that the Board should have the latitude to determine what constitutes a quorum of the Board in

developing its operating principles and procedures. Accordingly, this suggestion is not adopted.

One commenter suggested that the Board be selected in a manner similar to that used by the Consolidated Farm Service Agency for county and State committee elections. The Act requires that the Secretary appoint the Board from nominations submitted by certified organizations. Accordingly, we have not adopted this suggestion.

Forty-two commenters indicated that they did not oppose proposal II, which proposed that 6 of the 25 importer members would represent importers of sheep meat, that 1 member of the Executive Committee be an importer of sheep meat, and that organizations representing importers of sheep or sheep products may make nominations for representation for the importer unit. Two commenters opposed Proposal II because allocating six seats for meat importers would give meat importers a greater number of seats than they would have if representation were based on contributions to the annual revenue. Additionally, commenters suggested that § 1280.201(c) of the proposed Order be amended to read as follows: "The importer positions shall be allocated proportionally to importers of wool products, sheep meat, sheep, and sheep products according to the relative contributions to checkoff revenues." The Act does not provide for a specified number of seats on the Board or the Executive Committee for each importer segment; i.e., sheep meat and wool. However, the Department has determined that the Secretary should have the latitude to appoint representatives to the Board in a manner that best reflects the interests of the various importer segments. Accordingly, we have not adopted these suggestions.

One commenter perceived that the proposed Order lacks any minimum qualifications for entities seeking recognition as Qualified State Sheep Boards and suggested that the Department compare § 1280.207 and § 1280.126. Additionally, the commenter indicated that the proposed Order appears to establish such standards for those organizations certified to nominate candidates for the Board, but not for those who handle the assessments collected under the program. The Department has reviewed these sections and determined that both are consistent with the intent of the Act. Thus, we have made no changes to this section in this proposed rule.

Section 1280.202 Nominations

Two commenters suggested that the industry representatives nominated to

the Board should be elected by the members of each industry segment because the Secretary is unfamiliar with the abilities of individuals in the various industries. The Department believes that the certification and nomination process would give the Secretary the opportunity to appoint members who best represent each industry segment because certified organizations comprised of members of those segments will submit nominations to the Board. Additionally, the Act requires the Secretary to appoint the Board. Accordingly, we have not adopted this suggestion.

One commenter stated that the Department had modified the language of its initial proposal concerning nomination of importers in a way that made it appear that importer representatives need not be actual importers. The commenter suggests that the term "importer representatives" be used rather than "importer" because the term "importer representatives" would be less restrictive and does not imply that the Board members must actually import wool products. The Department did not include this portion of the proposal as submitted. However, the Department has again reviewed the original language in the initial proposal and believes that its slight modification did not materially change the proposal's meaning. The Act requires the Secretary to appoint importers to seats established under the Act from nominations submitted by qualified organizations that represent importers. Furthermore, the Act defines "importer" as any person who imports sheep or sheep products into the United States and a "person" as any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. Consequently, the Department believes that the Act intended that persons who import sheep and sheep products should be eligible for appointment to the Board. Accordingly, we have not adopted this suggestion.

One commenter opposed the inclusion of 25 importers on the Board because U.S. producers do not have the opportunity to influence policy in foreign countries. The Act provides that 25 importers of sheep and sheep products are to be represented on the Board. Accordingly, we have not adopted this suggestion.

Two commenters suggested that § 1280.202 of the proposed Order limits nominations to members of certified organizations because the definition of "feeder" and "producer" appears to allow a producer to qualify as a feeder but specifically prohibits feeders from

qualifying as producers. In addition, the commenters believe that the definition of "feeder" and "producer" may also invite First Amendment challenges by individuals claiming to occupy, or to have an opportunity to occupy a feeder seat, but who are required to join a producer trade association and pay dues to such association to be eligible to be nominated to the Board. The Department carefully reviewed the Act, the proposed Order, and the nomination procedures to ensure that the nomination process would be conducted as provided for in the Act. The Act provides for certified producer organizations to submit only nominations from their membership for the unit in which the certified organization is located. There is no similar restriction on certified feeder and importer organizations. The Department finds no need to change the Order as a result of these comments.

One commenter suggested that the Secretary should not be authorized to appoint the Board. The Act specifically authorizes the Secretary to appoint the Board from nominations submitted by certified organizations. Accordingly, we have rejected this suggestion.

Section 1280.205 Method of Obtaining Nominations

One commenter suggested that § 1280.205(a) (1) and (2) in the proposed Order should provide that individuals as well as certified organizations be certified as eligible to submit nominations. The Act provides for all nominations to be made from certified producer, feeder and importer organizations. If no organization is certified for an industry segment or for a State in the case of producers, the proposed Order permits the Secretary to obtain nominees by other means. Accordingly, we have not adopted this suggestion. The commenter further suggested that § 1280.205(2)(C) in the proposed Order be amended to read as follows: "The organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry as opposed to some other aspect of the industry." The Act establishes the criteria for certification, and it is not necessary to modify the Order in order to carry out the Act's provisions. The Department finds that the proposed changes to § 1280.205 enumerated above are unnecessary. Accordingly, we have not adopted them.

One commenter noted that § 1280.205(b)(2) in the proposed Order contained a misprint and suggested that the language "shall be made by the Secretary" be inserted between the

words "Board" and "from." There was, in fact, a misprint and we have amended the language in § 1280.205(b)(2) of the Order to mirror the language in the Act.

One commenter was concerned that producer nominees would have to be members of a certified organization in order to be nominated to the Board. The Act requires producer organizations to submit only nominations from the membership of the organization for the unit in which the organization is located. Accordingly, we have not changed this subsection in this proposed rule.

Section 1280.207 Certification

One commenter suggested that the National Lamb Feeders Association be the exclusive nominator of lamb feeder representatives, and be eligible to submit the names of the 15 sheep feeders for appointment to the 10 sheep feeder positions on the Board. The Department considered a similar comment proposed during the development of the proposed Order and did not accept it for inclusion in the proposed Order. This suggestion, if accepted, would prevent other existing organizations or new organizations from being eligible to nominate feeders to the Board, thereby restricting the opportunity for all qualified organizations to participate in the nomination process in contravention of the Act. Accordingly, we have rejected this suggestion.

Section 1280.208 Term of Office

One commenter noted that the word "proportionally" was substituted for the word "proportionately" in the proposed Order. To make the Order's language consistent with the language in the Act, we have replaced the word "proportionally" with "proportionately" in § 1280.208 in this proposed Order.

Section 1280.211 Powers and Duties of the Board

Two commenters suggested that § 1280.211(h) in the proposed Order should be amended to read as follows: "to contract with entities, if necessary, to implement plans or projects in accordance with the Act and whenever possible, the Board shall use existing national organizations representative of feeders, importers, or producers to implement plans and projects in order to increase efficiency and minimize costs." The Act does not require the Board to utilize existing national organizations to implement plans and projects. The Department believes that the Board could use such organizations

if it determined that they could effectively carry out certain projects, however, we believe that this language would unduly restrict the Board's authority to enter into contracts. The Department finds that § 1280.211(h) mirrors the Act which states: "* * * to contract with entities, if necessary, to carry out plans and projects in accordance with the Act." Accordingly, we have not adopted this language.

One commenter suggested that the Board should contract directly with existing national lamb organizations like the other existing livestock checkoff programs that contract with national organizations because this would ensure continued funding for such existing national organizations. The Act provides the Board with the power to contract with such entities, if necessary, to implement plans or projects in accordance with the Act. However, this suggestion if adopted as a requirement would limit the Board's ability to conduct its program in the most efficient and effective manner. Accordingly, we have not adopted this suggestion.

Section 1280.215 Use of Assessments

Fifty-nine commenters suggested that funds collected under the program should be used to fund promotion programs of "Fresh American Lamb" and other U.S. sheep products because the majority of funds collected would be generated from U.S. producers and feeders. Additionally, some commenters suggested using domestic assessments to fund promotion projects for "Fresh American Lamb" and other U.S. sheep products would provide the Board with the flexibility to establish the most effective program to enhance the markets for lamb and other sheep products. Furthermore, many commenters believe that this program is a domestic program funded primarily by U.S. growers, and because other livestock research and promotion programs do not prohibit country of origin promotion, funds generated under this program should not prohibit country of origin promotion. However other commenters contend that funds generated under the program should not be used for specific country of origin promotion, but to promote lamb and wool generically because generic promotion would provide for more equitable use of funds and be less subject to legal challenge. In addition, the same commenters pointed out that the promotion of lamb and wool generically would ensure that importers are not disadvantaged in light of their limited representation on the Board and the Executive Committee.

The Department believes that the Board should have the latitude to fund promotion plans and projects which specifically make reference to sheep and wool produced in the U.S. with the limitation that funding for such domestic country of origin plans and projects cannot exceed the combined domestic assessments collected on sheep and sheep products and further that the percentage of domestic assessments spent on the promotion of domestic sheep and sheep products shall not exceed the percentage of import assessments spent on the generic promotion of sheep and sheep products. Accordingly, § 1280.215 is revised in this proposed Order to allow Board funding of promotion plans and projects which involve identification of domestic sheep and sheep products as being U.S. produced but limit the amount of assessments the Board can spend on such plans and projects.

One commenter suggested that at least one-half of the assessments collected should be spent on promotion activities because the industry is changing and in a crisis. The Department believes that establishing a specific amount of assessments to fund a specific program area in the Order would limit the Board's flexibility to administer the program effectively. Accordingly, we have not adopted this suggestion. This same commenter also suggested that the National Lamb Feeders Association (NLFA) receive funding from the new Board. We previously determined that the Act does not authorize such funding and do not adopt this suggestion in this proposed Order.

Two commenters suggested that funds generated under the Act and the Order should promote a wide range of wool products in the United States, including interior textile products; e.g., carpets, rugs, and upholstery. The Department believes that the Board should be given the latitude to use funds for programs in a manner that would benefit the industry most effectively. The Department anticipates that the Board would fund projects according to the needs of the industry. Accordingly, we have not adopted this suggestion.

Two commenters suggested that assessments collected on wool should be spent on wool projects and assessments collected on lamb should be spent on lamb projects. The Department believes that the Board should have the latitude to spend funds on projects that would best address the economic needs of the entire industry. Accordingly, we have not adopted this suggestion.

One commenter suggested that no more than 4 percent of the annual

assessments collected should be used for overhead and administrative expenses, in order to limit the amount of assessments used for such expenses. The Act does not limit administrative and overhead expenses. The Department expects that the Board would maintain its administrative and overhead expenses at a reasonable level. Accordingly, we have not adopted this suggestion.

Some commenters suggested that any funds used for export promotion or in furtherance of other export activity should be separately accounted for, a percentage of total Board funds used in this manner should be refunded to importers who pay the assessments, and that expenditures for production-related research or information programs specifically targeted for promotion or product quality and safety-related expenditures should be treated similarly because such expenditures would not benefit importers. The Department has concluded that the Board should have the latitude to determine how funds are to be spent, subject to the approval of the Secretary. Further, the Act does not provide for reimbursements. Accordingly, we have not adopted these suggestions.

Executive Committee

Section 1280.217 Membership

One commenter suggested that each of the seven regions established under § 1280.211(n) in the proposed Order should be represented by one member of the Executive Committee for a total of seven members representing producers. The commenter further suggested that (1) each member be elected by a majority vote of the directors from their respective region; (2) three members represent feeders and be elected by a majority vote of the 10 feeder directors; and (3) three members represent importers and be elected by a majority vote of the 25 importer directors. The Department believes that the Board should have the latitude to determine how the Executive Committee is structured, within the requirements of the Act, and that the Board should establish voting requirements in its policies and procedures, subject to the Secretary's approval. In addition, the Act provides for one "feeder," member on the Executive Committee, not three. Accordingly, we have not adopted this suggestion.

One commenter suggested that § 1280.217 in the proposed Order implicates both equal protection and compelled association clauses of the Constitution because feeder and importer members would be elected by

producer members. The commenter asked that § 1280.217 be amended to allow the various industry segments to name their own representatives to the Executive Committee. The Department believes that the Board should establish procedures for the nomination and election of Executive Committee members in its policies and procedures, subject to the requirements of the Act, and approval of the Secretary. Thus, we have rejected the request to amend § 1280.217 of the proposed Order, and have published the language as initially proposed without change.

Several commenters recommended that of the three importer members who serve on the Executive Committee, one member should represent importers of sheep meat to ensure that the sheep meat industry has a voice on the Executive Committee. The Act does not specify the consist of the 3 importer members who serve on the Executive Committee. The Act merely provides that the Executive Committee would be elected by the membership of the Board. The Department believes that the Board should have the latitude to allocate the three importer member seats on the Executive Committee among importers of sheep, sheep meat, and wool and wool products. Accordingly, we have not adopted this suggestion.

Section 1280.221 Quorum

We received two comments concerning the establishment of a quorum of the Executive Committee. One commenter suggested that a quorum should be 11 members to ensure the presence of at least one nonproducer member. In addition, another commenter suggested that a quorum should consist of eight members, including the feeder representative and at least one importer representative. The language in the proposed Order mirrors the Act's requirement, which says that a quorum of the Executive Committee shall consist of eight members. The Act does not require a feeder or importer representative to be included. Importer and feeder representation within the 8-member quorum could be considered by the Board in developing its policies and procedures. Accordingly this suggestion is not adopted.

Section 1280.222 Vacancies

One commenter suggested that any vacancy on the Executive Committee be filled by the process established pursuant to § 1280.217 in the proposed Order, except that the Executive Committee members would be elected by each industry segment. The Act requires that the Executive Committee

be elected by the Board which includes producers, feeders, and importers. The Department believes that the Board should have the latitude to establish the procedures for filling a vacancy on the Executive Committee consistent with the requirements of the Act and subject to the approval of the Secretary.

Accordingly, we have not adopted this suggestion.

Assessments

Section 1280.224 Sheep Purchases

Four commenters were concerned about the high assessment rate compared to other commodity checkoff programs, and two of these commenters were concerned that the rate of assessment could increase over time. The Act establishes the initial assessment rate and specifies the manner in which the initial assessment rate may be adjusted. Such adjustments must be recommended by the Board and approved by the Secretary. Accordingly, this section is not amended in the Order.

One commenter suggested that the domestic and import rate of assessment should increase or decrease proportionately when the Board recommends a change in the assessment rate. The Act authorizes increases or decreases in the assessment rate for both domestic and imported sheep and sheep products. The Department believes that Congress intended that any adjustments in the initial assessment rate should be the same for all persons subject to assessment under the Act. Consequently, the Secretary will carefully review any Board recommended assessment adjustments to ensure that such adjustments are applied equally to all persons who are required to pay an assessment. Accordingly, § 1280.224(d), § 1280.225(d) and § 1280.228 (c) and (d) have been revised to reflect the intent of this suggestion.

One commenter felt that the method of collecting money at the various stages in the production chain would not be workable. The Act establishes the method of collecting assessments and identifies those persons responsible for collecting and remitting the assessment. Thus, we have not adopted this suggestion.

Section 1280.228 Imports

One commenter expressed opposition to Customs or any other government agency collecting funds from importers to promote the use of wool and sheep on the grounds that it is improper for the U.S. government to promote U.S. domestic consumption of imported or

domestic products. Customs merely serves as a collecting agent as authorized by the Act. Using Customs as a collecting agent in other similar checkoff programs has proven to be an exceptionally economical way of collecting importer assessments and ensuring compliance.

Several commenters suggested that the Department work with Customs or develop a joint committee to develop and publish the Harmonized Tariff Schedule (HTS) classification numbers, assessment amount, and the conversion factors for the various HTS numbers subject to assessment. Furthermore, these commenters asked for clarification on how the clean wool equivalent would be calculated or determined on the various types of imported wool and wool products. The Department published a proposed rule in the Federal Register (60 FR 51737) that (1) identifies the HTS classification numbers for imported sheep and sheep products subject to assessment; (2) describes how the assessment would be calculated if the proposed Order were approved in referendum; and (3) identifies the conversion factors that would be used to convert sheep meat to a live weight equivalent and wool products to a degreased wool equivalent.

Some commenters expressed concern about multiple assessments being collected on wool or wool products imported into the U.S. after having been previously exported on one or more occasions to other countries for further processing (i.e., weaving, cutting and/or assembly) and suggested that a drawback or refund of the assessment should be authorized if multiple assessments are collected. The Department believes that this comment would be more appropriately addressed in the implementing rules and regulations published in the Federal Register (60 FR 51737).

One commenter suggested that rates set forth in § 1280.228 (c) and (d) in the proposed Order should be reduced yearly by a percentage calculated by dividing the amounts provided to States pursuant to paragraphs (a) and (b) of § 1280.229 in the proposed Order by the total assessments collected by the Board on domestic marketings in the year funding is given to the States. Section 1280.229 of this subpart applies to QSSBs and as required by the Act sets forth the amount of annual assessments collected by the Board that must be returned to each QSSB. Section 1280.229 also specifies the minimum amount QSSBs would receive and requires that procedures be established to account for the funds. Accordingly,

we have not adopted this suggestion. The same commenter suggested that "as adjusted pursuant to § 1280.229," be added at the end of the first sentence under § 1280.228 (c) and (d) in the proposed Order. The provisions of § 1280.229, as previously discussed relate to the distribution of collected assessments to QSSBs and are not applicable to the assessment rate provisions for imported sheep and sheep products set forth in § 1280.228. Thus, we have not adopted this suggestion.

One commenter suggested that the phrase "and importer representatives" be inserted after "domestic sheep industry" under § 1280.228(c). The language in the proposed Order mirrors that found in the Act. Accordingly, we have not adopted this suggestion.

One commenter suggested that the Order require a specific finding that a proposed increase in the assessment rate does not violate the U.S. GATT obligations, preferably in consultation with the U.S. Trade Representative (USTR). The Secretary is already directed to consult with USTR pursuant to 7 U.S.C. 2278. Accordingly, this suggestion is not adopted.

Several commenters suggested that raw wool should not be exempt from the assessment collection provisions of the Act because the exemption of raw wool would create "free rides" because certain importers of raw wool would benefit from the program without actually paying an assessment on raw wool. The Act exempts imported raw wool from assessments. Accordingly, we have not adopted this suggestion.

Two commenters requested an explanation of how the equivalent in wool and wool products is to be calculated—specifically for wooltop, noils of wool, and wool wastes and generally for wool products that have been further processed. The Department has published in the Federal Register (60 FR 51737) proposed rules and regulations concerning the method of calculation to be used in determining the assessment amount for live sheep, sheep meat, and wool and wool products.

One commenter noted that § 1280.228(d) in the proposed Order substituted the word "clean" for "degreased." The Department did substitute the word and believes that the language in the proposed Order should mirror the language in the Act. Thus, the word "clean" is replaced with "degreased" in § 1280.228(d) in this proposed Order.

One commenter suggested that "equal protection" problems could arise because of the exemption of raw wool,

inadequate representation of lamb feeders, and inclusion of importers. The Act specifically exempts raw wool and sets forth the composition of the Board.

Several commenters suggested that processors of wool and wool products be allowed to retain 5 to 10 percent of the total amount of assessments collected to cover additional administrative costs associated with collecting and remitting assessments. The Act does not permit collecting persons to retain a portion of the assessments collected to offset administrative costs. Accordingly, we have not adopted this suggestion.

Section 1280.229 Qualified State Sheep Boards

One commenter suggested that the Qualified State Sheep Boards (QSSBs), the Board and those who contract with the QSSBs and the Board should separately account for checkoff funds. The commenter also suggested that each QSSB should (1) be required to give a written plan showing how it plans to protect against improper uses of assessments; (2) certify each year that it has not used assessments for forbidden purposes; and (3) permit the Secretary and the Board the opportunity to audit QSSBs and groups that contract with the Board and QSSBs. Section 1280.229(c) in the proposed Order provides that the Board would establish procedures with the approval of the Secretary to account for funds expended by the QSSBs. Additionally, § 1280.213, Books and Records of the Board, provides that (1) the Secretary may inspect and audit books and records of the Board; (2) the Board must prepare and submit from time-to-time such reports as prescribed by the Secretary; and (3) the Board's books are to be audited by an independent auditor at the end of each fiscal year, and auditor's report submitted to the Secretary.

Additionally, the Department believes the Act intends that the Board, the QSSBs and any organizations receiving funds to conduct program activities would be accountable for all funds received, and would be required to expend those funds in accordance with the Act and the Order. Therefore, although the Department agrees that accountability for funds is important, we have not made changes in this proposed Order as a result of these suggestions because the proposed Order already provides for such accountability. The Department believes that the Board would develop operating procedures and guidelines to ensure that any funds collected under the authority of this subpart would be accounted for as authorized under the

Act. Accordingly, we have not adopted this suggestion.

Two commenters suggested that importers receive a credit similar to the 20 percent share of funding returned to State QSSBs, contending that State funding defeats the basic purpose of the law which is to promote sheep products nationwide. The Act does not authorize the Board to distribute to importers a portion of the annual assessments similar to that distributed to QSSBs. Thus, we have not adopted this suggestion.

Section 1280.230 Collection

One commenter suggested that § 1280.230(b), Late Payment Charges, in the proposed Order should include a provision stating that any collector shall have the right to submit a written petition to the Board to have these charges waived or adjusted under this subpart. The commenter indicated the provisions should also state: "The Board shall consider such petitions and is empowered to waive or reduce penalties upon a two-thirds majority vote." Although, the Department believes that the Board should have the flexibility to establish collection procedures consistent with the Act's intent and Order provisions, we have not adopted this suggestion concerning late payments.

Another commenter suggested that the 2-percent per month late payment charge is usurious and should be pegged to the 30-year Treasury bill. The 2-percent late payment charge is designed to encourage people to remit assessments on a timely basis. The Department does not believe that reducing the late payment charge would further the purposes of the Act. Accordingly, we have not adopted this suggestion.

Fifty-three commenters supported § 1280.230(d) in the proposed Order which provides that the Secretary is authorized to receive assessments if the Board is not in place by the date the first assessments are to be collected. We have adopted this section as proposed.

Section 1280.231 Prohibitions on Use of Funds

Fifty-six commenters opposed and two supported the language of § 1280.231(d) in the proposed Order, which provides that no plans or projects shall be undertaken to promote or advertise any sheep or sheep products by brand or trade name without the approval of the Board and the concurrence of the Secretary. The commenters opposed the language because Board approval and Secretary concurrence is already authorized under

the Act and in the proposal submitted by the proponents of Proposal I. Therefore, the commenters feel that there is no need to address these plans separately from the Board's other activities and that doing so will result in additional bureaucracy and administration costs. The Act and proposed Order already authorize the Board and the Secretary to approve plans and projects for funding with assessments collected under the authority of this subpart. However, based on the Department's experience with other similar commodity promotion and research programs under the Department's oversight, branded promotion projects involve joint funding with participating private firms and a cooperative agreement. Consequently, the Department believes that such arrangements are more complex than the usual plans and projects and thus require additional review and evaluation to insure that branded promotions are in compliance with the Act and the proposed Order and Departmental policy. Based on the Department's past experience, jointly funded branded advertising projects have been reviewed and approved without added expense or undue delays. Accordingly, § 1280.231(d) of the proposed Order is published in this rule with no modifications.

One commenter suggested that § 1280.231, Prohibition on Use of Funds, be deleted because it would restrict the sheep industry's ability to defend against detrimental legislation. The Act prohibits funds generated under this program from being used in any manner for the purpose of influencing legislation or government action or policy. Accordingly, we have not adopted this suggestion.

One commenter suggested that § 1280.231(b)(2) should be strengthened because no assessments should be used to influence government decision-making under the guise of providing information requested by a friendly government official who is actually helping the industry to support or oppose legislation in which it has interest. The Department believes that the language provided in the Act and in the proposed Order addresses this concern. Accordingly, we have not adopted this suggestion.

Additional Comments

One commenter suggested that the Department conduct an economic impact study because of (1) the recordkeeping burden on the industry; (2) the loss of the Wool Act; and (3) the addition of the new program. The Administrator, AMS, previously

determined pursuant to the requirements set forth in the Regulatory Flexibility Act that the economic impact on small entities would not be significant. The Department does not anticipate a significant increase in costs and paperwork burden to those persons subject to the provisions of the Act and Order because most of the records required to be maintained are normally maintained by all businesses in the sheep industry and the calculation of assessments is a one step procedure that uses readily available records. Accordingly, we have not adopted this suggestion.

One commenter asked how the vote on the referendum would be conducted and how seats on the Executive Committee and the Board would be assigned because the Board is heavily weighted toward sheep growers. The Department published proposed referendum rules for public comment on August 8, 1995, in the Federal Register (60 FR 40313). These proposed rules include the registration and voting procedures. Also, the Act establishes the number of seats for the Executive Committee and the Board. We have made no changes in this proposed Order based on these questions.

Several commenters suggested that additional hearings be conducted throughout the country to allow time for the necessary revisions and allow for additional public comment. The Department conducted a public meeting on June 26, 1995, and provided a 45-day comment period so that any person interested in the sheep and wool checkoff program would have the opportunity to present testimony or submit comments by the July 17, 1995, deadline. The Department does not feel it is necessary to hold additional public meetings. Also, there are timeframes set forth in the Act. Further, all costs incurred by the Department in conducting the additional meetings are reimbursable by the sheep industry. Accordingly, we have not adopted this suggestion.

A few commenters suggested that the implementation of the program be delayed to allow sheep on feed inventories to be more manageable and allow producers to be assessed their fair share. The sheep industry has requested that assessments begin as soon as possible so that promotional and other activities can begin. Because of the time frames set forth in the Act, the Department believes that Congress intended for the Department to proceed in an expeditious manner. The Department has determined that no useful purpose would be served in

delaying implementation of this program.

One commenter suggested that the Department ensure that importers are eligible to participate in the referendum. The Act provides that sheep producers, sheep feeders, and importers of sheep and sheep products who, during a representative period established by the Department, were engaged in sheep production, sheep feeding or importation of sheep and sheep products—excluding importers of raw wool—are eligible to vote in the referendum. The Department believes that Congress intended that each person who is subject to the assessment is entitled to vote. Consequently, the Department has proposed and published referendum rules in the Federal Register (60 FR 40313).

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that chapter XI of title 7 of the Code of Federal Regulations be amended as follows:

1. Part 1280 is proposed to be added as follows:

PART 1280—SHEEP PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Sheep and Wool Promotion, Research, Education, and Information Order

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Authority: 7 U.S.C. 7101–7111.

Subpart A—Sheep and Wool Promotion, Research, Education, and Information Order

Definitions

§ 1280.101 Act.

The term *Act* means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101–7111; Public Law No. 103–107; 108 Stat. 4210, enacted October 22, 1994, and any amendments thereto.

§ 1280.102 Board.

The term *Board* means the National Sheep Promotion, Research, and Information Board established pursuant to § 1280.201.

§ 1280.103 Carbonized wool.

The term *carbonized wool* means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

§ 1280.104 Certified organization.

The term *certified organization* means any organization that has been certified by the Secretary pursuant to this part as being eligible to submit nominations for membership on the Board.

§ 1280.105 Collecting person.

The term *collecting person* means any person who is responsible for collecting an assessment pursuant to the Act, this subpart and regulations prescribed by the Board and approved by the Secretary, including processors and any other persons who are required to remit assessments to the Board pursuant to this part, except that a collecting person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving such sheep or sheep products for sale on commission for or on behalf of a producer or feeder shall pass the collected assessments on to the subsequent purchaser pursuant to the Act, this subpart and the regulations prescribed by the Board and approved by the Secretary.

§ 1280.106 Consumer information.

The term *consumer information* means nutritional data and other information that would assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, or use of sheep products.

§ 1280.107 Customs Service.

The term *Customs Service* means the U.S. Customs Service of the Department of the Treasury.

§ 1280.108 Degreased wool.

The term *degreased wool* means wool from which the bulk of impurities has been removed by processing.

§ 1280.109 Department.

The term *Department* means the U.S. Department of Agriculture.

§ 1280.110 Education.

The term *education* means activities providing information relating to the sheep industry or sheep products to producers, feeders, importers, consumers, and other persons.

§ 1280.111 Executive Committee.

The term *Executive Committee* means the Executive Committee of the Board established under § 1280.216.

§ 1280.112 Exporter.

The term *exporter* means any person who exports domestic live sheep or greasy wool from the United States.

§ 1280.113 Feeder.

The term *feeder* means any person who feeds lambs until the lambs reach slaughter weight.

§ 1280.114 Greasy wool.

The term *greasy wool* means wool that has not been washed or otherwise cleaned.

§ 1280.115 Handler.

The term *handler* means any person who purchases and markets greasy wool.

§ 1280.116 Importer.

The term *importer* means any person who imports sheep or sheep products into the United States.

§ 1280.117 Industry information.

The term *industry information* means information and programs that would lead to increased efficiency in processing and the development of new markets, marketing strategies, increased marketing efficiency, and activities to enhance the image of sheep or sheep products on a national or international basis.

§ 1280.118 National feeder organization.

The term *national feeder organization* means any organization of feeders that has been certified by the Secretary pursuant to the Act and this part as being eligible to submit nominations for membership on the Board.

§ 1280.119 Part and subpart.

Part means the Sheep and Wool Promotion, Research, Education, and Information Order and all rules and regulations issued pursuant to the Act

and the Order, and the Order itself shall be a *subpart* of such part.

§ 1280.120 Person.

The term *person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1280.121 Processor.

The term *processor* means any person who slaughters sheep or processes greasy wool into degreased wool.

§ 1280.122 Producer.

The term *producer* means any person, other than a feeder, who owns or acquires ownership of sheep.

§ 1280.123 Producer information.

The term *producer information* means activities designed to provide producers, feeders, and importers with information relating to production or marketing efficiencies or developments, program activities, or other information that would facilitate an increase in the consumption of sheep or sheep products.

§ 1280.124 Promotion.

The term *promotion* means any action (including paid advertising) to advance the image and desirability of sheep or sheep products, to improve the competitive position, and stimulate sales, of sheep products in the domestic and international marketplace.

§ 1280.125 Pulled wool.

The term *pulled wool* means wool that is pulled from the skin of slaughtered sheep.

§ 1280.126 Qualified State Sheep Board.

The term *Qualified State Sheep Board* means a sheep and wool promotion entity that:

- (a) Is authorized by State statute or organized and operating within a State;
- (b) Receives voluntary contributions or dues and conducts promotion, research, or consumer information programs with respect to sheep or wool, or both; and

- (c) Is recognized by the Board as the sheep and wool promotion entity within the State; except that not more than one QSSB shall exist in any State at any one time.

§ 1280.127 Raw wool.

The term *raw wool* means greasy wool, pulled wool, degreased wool, or carbonized wool.

§ 1280.128 Research.

The term *research* means development projects and studies relating to the production (including the

feeding of sheep), processing, distribution, or use of sheep or sheep products, to encourage, expand, improve, or make more efficient the marketing of sheep or sheep products.

§ 1280.129 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has been delegated, or to whom authority may be delegated, to act in the Secretary's stead.

§ 1280.130 Sheep.

The term *sheep* means ovine animals of any age, including lambs.

§ 1280.131 Sheep products.

The term *sheep products* means products produced in whole or in part from sheep, including wool and products containing wool fiber.

§ 1280.132 State.

The term *State* means each of the 50 States.

§ 1280.133 Unit.

The term *unit* means each State, group of States, or class designation that is represented on the Board.

§ 1280.134 United States.

The term *United States* means the 50 States and the District of Columbia.

§ 1280.135 Wool.

The term *wool* means the fiber from the fleece of a sheep.

§ 1280.136 Wool products.

The term *wool products* means products produced, in whole or in part, from wool and products containing wool fiber.

National Sheep Promotion, Research, and Information Board

§ 1280.201 Establishment and membership of the Board.

There is hereby established a National Sheep Promotion, Research, and Information Board (Board) of 120 members. Members of the Board shall be appointed by the Secretary from nominations submitted in accordance with this subpart. The seats shall be apportioned as follows:

- (a) *Producers.* For purposes of nominating producers to the Board, each State shall be represented by the following number of members:

Unit	Board members
Alabama	1
Alaska	1
Arizona	1

Unit	Board members
Arkansas	1
California	5
Colorado	4
Connecticut	1
Delaware	1
Florida	1
Georgia	1
Hawaii	1
Idaho	2
Illinois	1
Indiana	1
Iowa	2
Kansas	1
Kentucky	1
Louisiana	1
Maine	1
Maryland	1
Massachusetts	1
Michigan	1
Minnesota	2
Mississippi	1
Missouri	1
Montana	5
Nebraska	1
Nevada	1
New Hampshire	1
New Jersey	1
New Mexico	2
New York	1
North Carolina	1
North Dakota	2
Ohio	1
Oklahoma	1
Oregon	2
Pennsylvania	1
Rhode Island	1
South Carolina	1
South Dakota	4
Tennessee	1
Texas	10
Utah	3
Vermont	1
Virginia	1
Washington	1
West Virginia	1
Wisconsin	1
Wyoming	5

- (b) *Feeders.* The feeder sheep industry shall be represented by 10 members.

- (c) *Importers.* Importers shall be represented by 25 members.

- (d) *Alternates.* A unit represented by only one producer member may have an alternate member appointed to ensure representation at meetings of the Board.

§ 1280.202 Nominations.

- (a) *Producers.* The Secretary shall appoint producers and alternates to represent units as specified under § 1280.201(a) from nominations submitted by organizations certified under § 1280.207. A certified organization may submit only nominations for producer representatives and alternates if appropriate from the membership of the organization for the unit in which the organization operates. To be represented on the Board, each certified organization

shall submit to the Secretary at least 1.5 nominations for each seat on the Board for which the unit is entitled to representation. If a unit is entitled to only one seat on the Board, the unit shall submit at least two nominations for the appointment.

(b) *Feeders.* The Secretary shall appoint representatives of the feeder sheep industry to seats established under § 1280.201(b) from nominations submitted by qualified national organizations that represent the feeder sheep industry. To be represented on the Board, the industry shall provide at least 1.5 nominations for each appointment to the Board to which the feeder sheep industry is entitled.

(c) *Importers.* The Secretary shall appoint importers to seats established under § 1280.201(c) from nominations submitted by qualified organizations that represent importers. The Secretary shall receive at least 1.5 nominations for each appointment to the Board to which importers are entitled.

(d) As soon as practicable, the Secretary shall obtain nominations from certified organizations. If no organization is certified in a unit the Secretary may use other means to obtain nominations. A certified organization shall only submit nominations for positions on the Board representing units in which such certified organization can establish that it is certified as eligible to submit nominations for representation of that unit of individual producers, feeders, or importers residing in that unit.

(e) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations shall be initiated not less than 6 months before the expiration of the terms of the members whose terms are expiring, in the manner described in § 1280.205(b). In the case of vacancies due to reasons other than the expiration of term of office, successor Board members shall be appointed pursuant to § 1280.206.

(f) Where there is more than one eligible organization representing producers, feeders, or importers in a State or unit, they may caucus and jointly nominate a minimum of 1.5 qualified persons for each position representing that State or unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each certified organization may submit nominations for each appointment to be made to represent that State or unit.

(g) Nominations should be submitted in order of preference and, for the initial Board, in order of preference for

staggered terms. If the Secretary rejects any nominations submitted and there are insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraph (a), (b), or (c) of this section.

§ 1280.203 Nominee's agreement to serve.

Any producer, feeder, or importer nominated to serve on the Board, or as an alternate, shall file with the Secretary at the time of the nomination a written agreement to:

- (a) Serve on the Board if appointed;
- (b) Disclose any relationship with any organization that operates a qualified State or regional program or has a contractual relationship with the Board; and
- (c) Withdraw from participation in deliberations, decisionmaking, or voting on matters that concern the relationship disclosed under paragraph (b) of this section.

§ 1280.204 Appointment.

From the nominations made pursuant to § 1280.202, the Secretary shall appoint the members of the Board on the basis of representation provided in § 1280.201.

§ 1280.205 Method of obtaining nominations.

(a) *Initially established Board.* (1) *Producer and alternate nominations.* The Secretary shall solicit, from organizations certified under § 1280.207, nominations for each producer's or alternate member's seat on the initially-established Board to which a unit is entitled. If no such organization exist, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate.

(2) *Feeder and importer nominations.* The Secretary shall solicit, from certified organizations that represent feeders and importers, nominations for each seat to which feeders or importers are entitled. If no such organization exists, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate. In determining whether an organization is eligible to submit nominations under this subparagraph, the Secretary shall determine whether:

- (i) The organization's active membership includes a significant number of feeders or importers in relation to the total membership of the organization;
- (ii) There is evidence of stability and permanency of the organization; and
- (iii) The organization has a primary and overriding interest in representing

the feeder or importer segment of the sheep industry.

(b) *Subsequent appointment—(1) Producer nominations.* The solicitation of nominations for subsequent appointment to the Board from eligible organizations certified under § 1280.207 shall be initiated by the Secretary, with the Board securing the nominations for the Secretary.

(2) *Feeder and importer nominations.* The solicitation of feeder and importer nominations for subsequent appointment to the Board shall be made by the Secretary from organizations certified in accordance with paragraph (a)(2) of this section.

§ 1280.206 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations submitted by the Board.

§ 1280.207 Certification of organizations.

(a) *In general.* The eligibility of any State organization to represent producers and to participate in the making of nominations under this subpart shall be certified by the Secretary. The Secretary shall certify any State organization that the Secretary determines meets the eligibility criteria established under paragraph (b) of this section. An eligibility determination by the Secretary shall be final.

(b) *Basis for certification.* Certification shall be based upon, in addition to other available information, a factual report submitted by the organization that shall contain information considered relevant and specified by the Secretary, including:

- (1) The geographic territory covered by the active membership of the organization;
- (2) The nature and size of the active membership of the organization, including the proportion of the total number of active producers represented by the organization;
- (3) Evidence of stability and permanency of the organization;
- (4) Sources from which the operating funds of the organization are derived;
- (5) The functions of the organization; and
- (6) The ability and willingness of the organization to further the aims and objectives of the Act.

(c) *Primary considerations.* A primary consideration in determining the eligibility of an organization under this paragraph shall be whether:

- (1) The membership of the organization consists primarily of

producers who own a substantial quantity of sheep; and

(2) An interest of the organization is in the production of sheep.

§ 1280.208 Term of office.

Each appointment to the Board shall be for a term of 3 years, except that appointments to the initially established Board shall be proportionately for 1-year, 2-year, and 3-year terms. No person may serve more than two consecutive 3-year terms, except that elected officers shall not be subject to the term limitation while they hold office.

§ 1280.209 Compensation.

Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as Board members.

§ 1280.210 Removal.

If the Secretary determines that any person appointed under this part fails to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. The Secretary may remove a person appointed or certified under this part, or any employee of the Board, if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1280.211 Powers and duties of the Board.

The Board shall have the following powers and duties:

- (a) To elect officers of the Board, including a chairperson, vice chairperson, and secretary/treasurer;
- (b) To administer this subpart in accordance with its terms and provisions;
- (c) To recommend regulations to effectuate the terms and provisions of this subpart;
- (d) To hold at least one annual meeting and any additional meetings it deems appropriate;
- (e) To elect members of the Board to serve on the Executive Committee;
- (f) To approve or reject budgets submitted by the Executive Committee;
- (g) To submit budgets to the Secretary for approval;
- (h) To contract with entities, if necessary, to implement plans or projects in accordance with the Act;
- (i) To conduct programs of promotion, research, consumer information, education, industry information, and producer information;
- (j) To receive, investigate, and report to the Secretary complaints of violations of this subpart;

(k) To recommend to the Secretary amendments to this subpart;

(l) To provide the Secretary with prior notice of meetings of the Board to permit the Secretary or a designated representative to attend such meetings;

(m) To provide not less than annually a report to producers, feeders, and importers, accounting for the funds expended by the Board, and describing programs implemented under the Act; and to make such report available to the public upon request;

(n) To establish seven regions that, to the extent practicable, contain geographically contiguous States and approximately equal numbers of sheep producers and sheep production;

(o) To employ or retain necessary staff; and

(p) To invest funds in accordance with § 1280.214.

§ 1280.212 Budgets.

(a) *In general.* The Board shall review the budget submitted by the Executive Committee, on a fiscal year basis, of anticipated expenses and disbursements by the Board, including probable costs of administration and promotion, research, consumer information, education, industry information, and producer information projects. The Board shall submit the budget to the Secretary for the Secretary's approval.

(b) *Limitation.* No expenditure of funds may be made by the Board unless such expenditure is authorized under a budget or budget amendment approved by the Secretary.

§ 1280.213 Books and records of the Board.

The Board shall:

- (a) Maintain such books and records, which shall be made available to the Secretary for inspection and audit, as the Secretary may prescribe;
- (b) Prepare and submit to the Secretary, from time-to-time, such reports as the Secretary may prescribe; and
- (c) Account for the receipt and disbursement of all funds entrusted to it. The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

§ 1280.214 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the

Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Any income from any such investment may be used for any purpose for which the invested funds may be used.

§ 1280.215 Use of assessments.

(a) Assessments received by the Board shall be used by the Board:

(1) To fund promotion, research, education, and information plans and projects authorized under this subpart, including promotion plans and projects which make specific reference to domestic sheep and sheep products originating or being produced and/or marketed in the U.S., except that the combined expenditures for such promotion plans and projects involving domestic country of origin shall be limited to no more than the combined domestic assessments collected on sheep and sheep products and the percentage of domestic assessments spent on the promotion of domestic sheep and sheep products shall not exceed the percentage of import assessments spent on the generic promotion of sheep and sheep products; and

(2) For the payment of expenses incurred in administering this subpart, including a reasonable reserve.

(b) The Board shall reimburse the Secretary, from assessments collected, for costs incurred in implementing and administering the Order as provided for under the Act.

Executive Committee

§ 1280.216 Establishment.

The Board shall establish an Executive Committee of the Board to assist the Board in the administration of the terms and provisions of this subpart, under the direction of the Board, and consistent with the policies determined by the Board.

§ 1280.217 Membership.

The Executive Committee shall be comprised of 14 members as follows:

(a) Eleven members of the Executive Committee shall be elected by the Board annually. Of these members:

(1) One member shall represent each of the seven regions established under § 1280.211(n) for a total of seven members representing producers;

(2) One member shall represent feeders; and

(3) Three members shall represent importers.

(b) The remaining three members of the Executive Committee shall be the elected officers of the Board.

§ 1280.218 Powers and duties.

(a) *Plans and projects.* The Executive Committee shall develop plans or projects of promotion and advertising, research, consumer information, education, industry information, and producer information, which plans or projects shall be paid for with assessments collected by the Board. The plans or projects shall not become effective until approved by the Secretary.

(b) *Budgets.* The Executive Committee shall be responsible for developing and submitting to the Board, for Board approval, budgets on a fiscal year basis of the Board's anticipated expenses and disbursements, including the estimated costs of advertising and promotion, research, consumer information, education, industry information, and producer information projects. The Board shall approve or disapprove such budgets and, if approved, shall submit them to the Secretary for the Secretary's approval.

§ 1280.219 Term of office.

Terms of appointment to the Executive Committee shall be for 1 year.

§ 1280.220 Chairperson.

The Chairperson of the Board shall serve as chairperson of the Executive Committee.

§ 1280.221 Quorum.

A quorum of the Executive Committee shall consist of eight members.

§ 1280.222 Vacancies.

To fill any vacancy caused by the death, removal, resignation, or disqualification of any member of the Executive Committee, the Board shall elect a successor for the position pursuant to § 1280.217.

Expenses**§ 1280.223 Expenses.**

(a) The Board shall be responsible for all expenses of the Board and the Executive Committee.

(b) *Contracts and Agreements.* Any contract or agreement entered into by the Board shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project of promotion, research, education, consumer information, industry information, and producer information, together with a budget or budgets that shall show estimated costs to be incurred for such plan or project; and

(2) No plan, project, contract, or agreement shall become effective until it has been approved by the Secretary.

(c) The contracting party shall:

(1) keep accurate records of all of its transactions;

(2) account for funds received and expended, including staff time, salaries, and expenses expended on behalf of Board activities;

(3) make periodic reports to the Board of activities conducted; and

(4) make such other reports as the Board or the Secretary may require.

Assessments**§ 1280.224 Sheep purchases.**

(a) *In general.* Each person making payment to a producer or feeder for sheep purchased from the producer or feeder shall be a collecting person and shall collect an assessment from the producer or feeder on each sheep sold by the producer or feeder. Each such producer or feeder shall pay such assessment to the collecting person at the rate set forth in paragraph (d) of this section.

(b) *Remittances.* Each processor making payment to a producer, feeder, or collecting person for sheep purchased from the producer, feeder, or collecting person shall be a collecting person and shall collect an assessment from the producer, feeder, or other collecting person on each sheep sold by the producer, feeder, or collecting person, and each such producer, feeder, or collecting person shall pay such assessment to the processor at the rate set forth in paragraph (d) in this section, and such processor shall remit the assessment to the Board.

(c) *Processing.* Any person who purchases sheep for processing shall collect the assessment from the seller and remit the assessment to the Board.

(d) *Rate.* Except as otherwise provided, the rate of assessment shall be 1-cent-per-pound of live sheep sold. The rate of assessment may be raised or lowered no more than 0.15 of a cent in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount. The rate of assessment shall not exceed 2½-cents-per-pound.

§ 1280.225 Wool purchases.

(a) *In general.* Each person making payment to a producer, feeder, or handler of wool for wool purchased from the producer, feeder, or handler shall be a collecting person and shall collect an assessment from the producer, feeder, or handler on each pound of greasy wool sold. The

producer, feeder, or handler shall pay such assessment to the collecting person at the rate set forth in paragraph (d) of this section.

(b) *Remittances.* Each processor making payment to a producer, feeder, handler, or collecting person for wool purchased from the producer, feeder, handler, or collecting person shall be a collecting person and shall collect an assessment from the producer, feeder, handler, or other collecting person on all wool sold by the producer, feeder, handler, or collecting person, and each such producer, feeder, handler, or collecting person shall pay such assessment to the processor at the rate set forth in paragraph (d) of this section and such processor shall remit the assessment to the Board.

(c) *Processing.* Any person purchasing greasy wool for processing shall collect the assessment and remit the assessment to the Board.

(d) *Rate.* Except as otherwise provided, the rate of assessment shall be 2-cents-per-pound. The rate of assessment may be raised or lowered no more than 0.2 of a cent per pound in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount. The rate of assessment shall not exceed 4-cents-per-pound of greasy wool.

§ 1280.226 Direct processing.

Each person who processes or causes to be processed sheep or sheep products of that person's own production, and markets such sheep or sheep products, shall pay an assessment on such sheep or sheep products at the time of sale at a rate equivalent to the rate established in § 1280.224(d) or § 1280.225(d), as appropriate, and shall remit such assessment to the Board.

§ 1280.227 Exports.

Each person who exports live sheep or greasy wool shall remit the assessment on such sheep or greasy wool at the time of export, at a rate equivalent to the rate established in § 1280.224(d) or § 1280.225(d), as appropriate, and shall remit such assessment to the Board.

§ 1280.228 Imports.

(a) *In general.* Each person who imports sheep or sheep products or who imports wool or products containing wool (with the exception of raw wool)

into the United States shall pay an assessment to the Board.

(b) Collection. The Customs Service is authorized to collect and remit such assessment to the Secretary for disbursement to the Board.

(c) Rate for sheep and sheep products. The assessment rate for sheep shall be 1-cent-per-pound of live sheep. The assessment rate for sheep products shall be the equivalent of 1-cent-per-pound of live sheep, as determined by the Secretary in consultation with the domestic sheep industry. Such rates may be raised or lowered no more than 0.15-cent-per-pound in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary, but shall not exceed 2½-cents-per-pound. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount.

(d) Rate for wool and wool products. The assessment rate for wool and products containing wool shall be 2-cents-per-pound of degreased wool or the equivalent of degreased wool. The rate of assessment may be raised or lowered no more than 0.2-cents-per-pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, but shall not exceed 4-cents-per-pound of degreased wool or the equivalent. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount.

(e) The Secretary shall issue regulations regarding the assessment rates for imported sheep and sheep products. The Secretary may exclude from assessment certain imported products that contain *de minimis* levels of sheep or sheep products and waive the assessment on such products.

§ 1280.229 Qualified State Sheep Board.

(a) Except as provided in paragraph (b) of this section, 20 percent of the total assessments collected by the Board on the marketings of domestic sheep and domestic sheep products in any 1 year from a State shall be returned to the QSSB of the State.

(b) No QSSB shall receive less than \$2,500 under paragraph (a) of this section in any 1 year. (c) The Board shall establish procedures with the approval of the Secretary to account for funds expended pursuant to paragraphs (a) and (b) of this section.

§ 1280.230 Collection.

(a) Each person responsible for the collection and remittance to the Board of assessments under this subpart shall do so on a monthly basis, unless the Board, with the approval of the Secretary, has specifically authorized otherwise.

(b) Late payment charges. Any unpaid assessments due the Board or from a person responsible for remitting assessments to the Board, shall be increased by 2 percent each month beginning with the day after the date such assessments were due under this subpart. Any assessments or late payment charges that remain unpaid shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(c) Any unpaid assessments due to the Board pursuant to § 1280.224, § 1280.225, § 1280.226, and § 1280.227 shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a date later than the date prescribed by this subpart because of a person's failure to submit a timely report to the Board shall be considered to have been payable by the date it would have been due if the report had been timely filed. The date of payment is the applicable postmark date or the date of receipt by the Board, whichever is earlier.

(d) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is formed. The Secretary shall have the authority to promulgate rules and regulations concerning assessments and the collection of assessments if the Board is not in place or is otherwise unable to develop such rules and regulations.

§ 1280.231 Prohibition on use of funds.

(a) Except as otherwise provided in paragraph (b) of this section, no funds collected by the Board under this subpart shall be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State Government, or any political subdivision thereof.

(b) The prohibition in paragraph (a) of this section shall not apply:

(1) To the development and recommendation of amendments to this subpart; or

(2) To the communication to appropriate government officials, in response to a request made by the officials, of information relating to the conduct, implementation, or results of promotion, research, consumer information, education, industry information, or producer information activities under this subpart.

(c) A plan or project conducted pursuant to this part shall not make false or misleading claims on behalf of sheep or sheep products or against a competing product.

(d) No such plans or projects shall be undertaken to promote or advertise any sheep or sheep products by brand or trade name without the approval of the Board and the concurrence of the Secretary.

Reports, Books, and Records

§ 1280.232 Reports.

(a) Each collecting person, including processors and other persons required to remit assessments to the Board pursuant to § 1280.224(b) for live sheep, each person who markets sheep products of that person's own production and each exporter of sheep shall report to the Board information pursuant to regulations prescribed by the Board and approved by the Secretary. Such information may include:

(1) The number of sheep purchased, initially transferred or which, in any other manner, are subject to the collection of assessment, and the dates of such transaction;

(2) The number of sheep imported or exported, or the equivalent thereof of sheep products imported;

(3) The amount of assessment remitted;

(4) An explanation for the remittance of any assessment that is less than the pounds of sheep multiplied by the assessment rate; and

(5) The date any assessment was paid.

(b) Each collecting person, including processors and other persons required to remit assessments to the Board pursuant to § 1280.225(b) for wool purchased from the producer or handler of wool or wool products, each person purchasing greasy wool for processing, each importer of wool or wool products (except raw wool), each exporter of greasy wool, and each person who markets wool of that person's own production shall report to the Board information pursuant to regulations prescribed by the Board and approved by the Secretary. Such information may include:

(1) The amount of wool purchased, initially transferred or in any other manner subject to the collection of assessment, and the dates of such transaction;

(2) The amount of wool imported (except raw wool) or the equivalent thereof of wool products imported or the amount of greasy wool exported;

(3) The amount of assessment remitted;

(4) An explanation for the remittance of an assessment that is less than the pounds of wool multiplied by the assessment rate; and

(5) The date any assessment was paid.

§ 1280.233 Books and records.

(a) Each collecting person, including processors and other persons required to remit assessments to the Board, each importer of sheep or sheep products (except raw wool), and exporter of sheep or greasy wool, and each person who markets sheep products of that person's own production, shall maintain and make available for inspection such books and records as may be required by regulations prescribed by the Board and approved by the Secretary, including records necessary to verify any required reports. Such records shall be maintained for the period of time prescribed by the regulations issued hereunder.

(b) Document evidencing payment of assessments. Each collecting person responsible for collecting an assessment paid pursuant to this subpart, other than a person who slaughters sheep or markets sheep products of his or her own production for sale, is required to give the person or collecting person from whom the collecting person collected an assessment written evidence of payment of the assessments paid pursuant to this subpart. Such written evidence serving as a receipt shall include:

(1) Name and address of the collecting person;

(2) Name of the producer who paid the assessment;

(3) Number of head of sheep or pounds of wool sold;

(4) Total assessments paid by the producer;

(5) Date; and

(6) Such other information as the Board, with the approval of the Secretary, may require.

§ 1280.234 Use of information.

Information from records or reports required pursuant to this subpart shall be made available to the Secretary as is appropriate to the administration or enforcement of the Act, this subpart or any regulation issued under the Act. In

addition, the Secretary shall authorize the use under this part of information that is accumulated under laws or regulations other than the Act or regulations issued under the Act regarding persons paying producers, feeders, importers, handlers, or processors.

§ 1280.235 Confidentiality.

(a) All information from records or reports required pursuant to this subpart shall be kept confidential by all officers and employees of the Department and of the Board. Such information may be disclosed only if the Secretary considers the information relevant, the information is disclosed only in a suit or administrative hearing brought at the direction or on the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and the information relates to the Act.

(b) Administration. No information obtained under the authority of this subpart may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of the Act and any investigatory or enforcement action necessary for the implementation of the Act.

(c) General statements. Nothing in paragraph (a) of this section may be deemed to prohibit:

(1) The issuance of general statements, based on the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; or

(2) The publication, by direction of the Secretary, of the name of any person violating this subpart and a statement of the particular provisions of this subpart violated by such person.

(d) Penalty. Any person who willfully violates the provisions of this subpart, on conviction, shall be subject to a fine of not more than \$1,000, or to imprisonment for not more than 1 year, or both, and if the person is an officer or employee of the Board or the Department, that person shall be removed from office.

Miscellaneous

§ 1280.240 Right of the Secretary.

All fiscal matters, programs or projects, bylaws, rules or regulations, reports, or other substantive actions proposed, and prepared by the Board shall be submitted to the Secretary for approval.

§ 1280.241 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of or under the control of the Board, including any claims of the Board against third parties that exist at the time of such termination.

(b) The trustees shall:

(1) Act as trustees until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by the Board pursuant to § 1280.223(b);

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignment of other instruments necessary or appropriate to transfer to such persons full title and right to all of the funds, property, and claims of the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to pay the necessary costs of liquidation shall be turned over to the Secretary to be used, to the extent practicable, for continuing one or more of the promotion, research, consumer information, education, industry information, and producer information plans or projects authorized pursuant to this subpart.

§ 1280.242 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability that has arisen or may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary or any person with respect to any such violation.

§ 1280.243 Personal liability.

No member, employee, or agent of the Board, including employees, agents, or Board members of the QSSB, acting pursuant to the authority provided in this subpart, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission, of such member, employee, or agent except for acts of dishonesty or willful misconduct.

§ 1280.244 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions, or publications developed through the use of funds remitted to the Board under the provisions of this subpart shall be the property of the United States

Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1280.240 shall apply to determine disposition of all such property.

§ 1280.245 Amendments.

Amendments to the subpart may be proposed, from time to time, by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1280.246 Separability.

If any provision of this subpart is declared invalid or its applicability to

any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

Dated: November 29, 1995.

Lon Hatamiya,

Administrator.

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